

REMARKS

In the Office Action, claims 1-11, 14-17, 19-21, 23-35 and 37-40 were rejected and claims 22 and 23 were objected to. By the present Response, claims 1, 9, 14-17, 19, and 20 are amended and new claims 41-47 are added. These amendments do not add any new matter. Upon entry of these amendments, claims 1-11, 14-17, and 19-47 remain pending in the present application and are believed to be in condition for allowance. In view of the foregoing amendments and the following remarks, the Applicants respectfully request reconsideration and allowance of all pending claims.

Claim Rejections under 35 U.S.C. § 103(a)

The Examiner rejected claims 1-5, 8, 12, and 13 under 35 U.S.C. § 103(a) as obvious over Geisy et al. (U.S. Pub. No. 2002/0166326) (Hereinafter “Geisy”), Wowk et al. (U.S. Pub. No. 2005/0016198) (Hereinafter “Wowk”), or Gershtein et al. (U.S. Pat. No. 6,938,654) (Hereinafter “Gershtein”), in view of Storey (U.S. Patent No. 6,679,071) (Hereinafter “Storey”). The Examiner rejected claims 6, 9-11, 31 and 40 under 35 U.S.C. § 103(a) as obvious over Geisy, Wowk, or Gershtein in view of Storey, further in view of Laskaris (U.S. Patent No. 4,492,090) (Hereinafter “Laskaris”). The Examiner rejected claims 1-5, 7, 8, 13-17, and 40 under 35 U.S.C. § 103(a) as obvious over Jones et al. (U.S. Pat. No. 3,919,852) (Hereinafter “Jones”) in view of Storey. The Examiner rejected claims 6, 9-11, 19, 31, and 40 under 35 U.S.C. § 103(a) as obvious over Jones in view of Storey, further in view of Laskaris. The Examiner rejected claims 20, 21, 25, 27-31, and 33-35 under 35 U.S.C. § 103(a) as obvious over Vince et al. (U.S. Pub. No. 2004/0020236) (Hereinafter “Vince”) in view of Laskaris. The Examiner rejected claims 24, 26, 32, and 37-39 under 35 U.S.C. § 103(a) as obvious over Vince in view of Laskaris, further in view of Storey. The Applicants respectfully traverse these rejections.

Legal Precedent and Guidelines

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (PTO Bd. App. 1979). In addressing obviousness determinations under 35 U.S.C. § 103, the Supreme Court in *KSR International Co. v. Teleflex Inc.*, No. 04-1350 (April 30, 2007), reaffirmed many of its precedents relating to obviousness including its holding in *Graham v. John Deere Co.*, 383 U.S. 1 (1966). In *KSR*, the Court also reaffirmed that “a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *Id.* at 14. In this regard, the *KSR* court stated that “it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does ... because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.” *Id.* at 14-15. In *KSR*, the court noted that the demonstration of a teaching, suggestion, or motivation to combine provides a “helpful insight” in determining whether claimed subject matter is obvious. *KSR, slip op.* at 14.

Furthermore, the *KSR* court did not diminish the requirement for objective evidence of obviousness. *Id.* at 14 (“To facilitate review, this analysis should be made explicit. See *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006) (“[R]jections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”) As our precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”); see also, *In re Lee*, 61 U.S.P.Q.2d 1430, 1436 (Fed. Cir. 2002) (holding that the factual inquiry whether to combine references must be thorough and searching, and that it must be based on *objective evidence of record*).

When prior art references require a selected combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gained from the invention itself, i.e., something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination. *Uniroyal Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 U.S.P.Q.2d 1434 (Fed. Cir. 1988). One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). The Federal Circuit has warned that the Examiner must not, “fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.” *In re Dembiczak*, F.3d 994, 999, 50 U.S.P.Q.2d 52 (Fed. Cir. 1999) (quoting *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983)).

It is improper to combine references where the references teach away from their combination. *In re Grasselli*, 713 F.2d 731, 743, 218 U.S.P.Q. 769, 779 (Fed. Cir. 1983); M.P.E.P. § 2145. Moreover, if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (CCPA 1959); *see* M.P.E.P. § 2143.01(VI). If the proposed modification or combination would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984); *see* M.P.E.P. § 2143.01(V).

The cited references, taken alone or in hypothetical combination, fail to teach or suggest features recited by independent claim 1.

Turning to the claims, amended independent claim 1 recites, *inter alia*,

A method of transporting a device having a cryogen from a first facility to a second facility, comprising providing commands remotely for actively maintaining the cryogen in the device within pre-determined parameters during at least a portion of a route of travel of the device from the first facility to the second facility, wherein the device comprises a cryogenically cooled magnet, an imaging device, a medical diagnostic device, a cryogenically cooled superconductive device, or a combination thereof.

Regarding the first rejection of claim 1, the cited references, taken alone or in hypothetical combination, fail to teach or suggest, “A device [in transport] having [a] cryogen . . . comprising providing commands remotely for actively maintaining the cryogen in the device . . . wherein the device comprises a cryogenically cooled magnet, an imaging device, a medical diagnostic device, a cryogenically cooled superconductive device, or a combination thereof,” as recited by amended independent claim 1. (Emphasis added). First, Geisy discloses a Dewar vessel used as a container for cryogenic storage or transportation of a material. *See* Geisy, par. 28. The Wowk reference discloses devices for storage or transportation of materials at cryogenic temperatures. *See* Wowk, par. 10-11. The Gershtein reference discloses a system for transportation and storage of a product. *See* Gershtein, col. 1, lines 49-54. However, these references fail to teach or suggest the features recited by claim 1. Moreover, the secondary reference fails to cure the deficiencies of the primary reference. Instead, the Storey reference discloses a system for a refrigerated transport container. *See* Storey, col. 1, lines 49-52. In other words, the cited references do not teach or suggest coolant (e.g., cryogen) in a device being cooled within a container, but rather the cited references only disclose coolant circulating in part of the containers. As a result, the cited references, taken alone or in hypothetical combination, cannot support a *prima facie* case of obviousness of independent claim 1 and its dependent claims.

Regarding the second rejection of claim 1, the Jones reference discloses a method for reliquifying boil-off gas during transport of liquid gas in an ocean tanker. *See* Jones, Col. 2, lines 42-64. Jones uses a compression refrigerator to reliquify cargo gas lost due to evaporation. *Id.* Jones does not teach or suggest the features of claim 1 as recited above. Again, the Storey reference fails to cure the deficiencies of the Jones reference. The Storey reference discloses a system for a refrigerated transport container. *See* Storey, col. 1, lines 49-52. In other words, the cited references do not teach or suggest coolant (e.g., cryogen) in a device being cooled within a container, but rather the cited references only disclose coolant circulating in a part of the containers.

Applicants note that additional references do not obviate the failure of the cited references to teach or suggest the features of claim 1. For example, Laskaris discloses a support assembly for stabilization of a cryostat during transport. *See* Laskaris, col. 1 line 61 – col. 2, line 50. The Jones reference discloses a method for reliquifying boil-off gas during transport of liquid gas in an ocean tanker. *See* Jones, Col. 2, lines 42-64.

As a result, the cited references, taken alone or in hypothetical combination, cannot support a *prima facie* case of obviousness of independent claim 1 and its dependent claims.

The cited references, taken alone or in hypothetical combination, fail to teach or suggest features recited by independent claim 14.

Amended independent claim 14 recites, *inter alia*,

An apparatus for use with a device having cryogen and a cryogenic cooling system, comprising: a portable resource supply configured to provide resources to the cryogenic cooling system of the device such that the cryogen cooling system maintains the cryogen within pre-determined parameters during transportation of the device . . . wherein the device comprises a cryogenically cooled magnet, an

imaging device, a medical diagnostic device, a cryogenically cooled superconductive device, or a combination thereof.

The cited references, taken alone or in hypothetical combination, fail to teach or suggest, “a device having cryogen and a cryogenic cooling system, comprising: a portable resource supply configured to provide resources to the cryogenic cooling system of the device such that the cryogen cooling system maintains the cryogen within pre-determined parameters during transportation of the device . . . wherein the device comprises a cryogenically cooled magnet, an imaging device, a medical diagnostic device, a cryogenically cooled superconductive device, or a combination thereof,” as recited by amended independent claim 14. The Jones reference discloses a method for reliquifying boil-off gas during transport of liquid gas in an ocean tanker. *See* Jones, Col. 2, lines 42-64. Jones uses a compression refrigerator to reliquify cargo gas lost due to evaporation. *Id.* However, Jones fails to teach or suggest the features recited by claim 14. Again, the Storey reference fails to cure the deficiencies of the Jones reference. The Storey reference discloses a system for a refrigerated transport container. *See* Storey, col. 1, lines 49-52. In other words, the cited references do not teach or suggest coolant (e.g., cryogen) in a device being cooled within a container, but rather the cited references only disclose coolant circulating in a part of the containers.

Applicants note that additional references do not obviate the failure of the cited references to teach or suggest features of claim 14. For example, Laskaris discloses a support assembly for stabilization of a cryostat during transport. *See* Laskaris, col. 1 line 61 – col. 2, line 50.

As a result, the cited references, taken alone or in hypothetical combination, cannot support a *prima facie* case of obviousness of independent claim 14 and its dependent claims.

The cited references, taken alone or in hypothetical combination, fail to teach or suggest features recited by independent claim 20.

Independent claim 20 recites, *inter alia*,

A method of maintaining a cryogenic imaging device during transport from a first facility to a second facility, comprising receiving the cryogenic imaging device from the first facility at a third facility via a first transportation provider, wherein the third facility is located at an intermediate point on a transportation route between the first and second facilities, actively maintaining cryogen within the cryogenic imaging device within pre-determined parameters via resources of the third facility

The cited references, taken alone or in hypothetical combination, fail to teach or suggest, “A method of maintaining a cryogenic imaging device during transport from a first facility to a second facility, comprising . . . actively maintaining cryogen within the cryogenic imaging device within pre-determined parameters via resources of [a] third facility,” as recited by independent claim 20. (Emphasis added). The Vince reference discloses a refrigeration system for a container. *See* Vince, par. 10. However, the Vince reference fails to teach or suggest the features recited by claim 20. The Laskaris reference fails to cure the deficiencies of the primary reference. Instead, the Laskaris reference discloses a support assembly for stabilization of a cryostat during transport. *See* Laskaris, col. 1 line 61 – col. 2, line 50. In other words, the cited references do not teach or suggest coolant (e.g., cryogen) in a device being cooled within a container, but rather the cited references only disclose coolant circulating in a part of a container and a structural support for transport of a cryostat.

Applicants note that additional references do not obviate the failure of the cited references to teach or suggest features of claim 20. For example, the Storey reference discloses a system for a refrigerated transport container. *See* Storey, col. 1, lines 49-52.

As a result, the cited references, taken alone or in hypothetical combination, cannot support a *prima facie* case of obviousness of independent claim 20 and its dependent claims.

The cited references, taken alone or in hypothetical combination, fail to teach or suggest features recited by independent claim 31.

Independent claim 31 recites, *inter alia*, “A system for use with a cryogenic imaging device during transport from a first facility to a second facility, comprising means for actively maintaining cryogen within the cryogenic imaging device within predetermined parameters via resources of an intermediate facility”

Regarding the first rejection of claim 31, the cited references, taken alone or in hypothetical combination, fail to teach or suggest, “A system for use with a cryogenic imaging device during transport from a first facility to a second facility, comprising means for actively maintaining cryogen within the cryogenic imaging device within predetermined parameters via resources of an intermediate facility,” as recited by independent claim 31. (Emphasis added). Geisy discloses a Dewar vessel used as a container for cryogenic storage or transportation of a material. See Geisy, par. 28. The Wowk reference discloses devices for storage or transportation of materials at cryogenic temperatures. See Wowk, par. 10-11. The Gershtein reference discloses a system for transportation and storage of a product. See Gershtein, col. 1, lines 49-54. However, these references fail to teach or suggest the features recited by claim 31. Moreover, the secondary reference fails to cure the deficiencies of the primary reference. Instead, the Laskaris reference discloses a support assembly for stabilization of a cryostat during transport. See Laskaris, col. 1 line 61 – col. 2, line 50.

Regarding the second rejection of claim 31, the Vince reference discloses a refrigeration system for a container. See Vince, par. 10. However, the Vince reference does not teach or suggest the features of claim 31 as recited above. The Laskaris and

Storey references fail to cure the deficiencies of the primary reference. Instead, the Laskaris reference discloses a support assembly for stabilization of a cryostat during transport. *See* Laskaris, col. 1 line 61 – col. 2, line 50. The Storey reference discloses a system for a refrigerated transport container. *See* Storey, col. 1, lines 49-52. Accordingly, the cited references do not teach or suggest coolant (e.g., cryogen) in a device being cooled within a container, but rather the cited references only disclose coolant circulating in a part of a container and a structural support for transport of a cryostat.

Applicants note that additional references do not obviate the failure of the cited references to teach or suggest features of claim 31. For example, the Jones reference discloses a method for reliquifying boil-off gas during transport of liquid gas in an ocean tanker. *See* Jones, Col. 2, lines 42-64. Jones uses a compression refrigerator to reliquify cargo gas lost due to evaporation. *Id.*

As a result, the cited references, taken alone or in hypothetical combination, cannot support a *prima facie* case of obviousness of independent claim 31 and its dependent claims.

The cited references, taken alone or in hypothetical combination, fail to teach or suggest features recited by independent claim 32.

Independent claim 32 recites, *inter alia*, “A computer program for use with a cryogenic imaging device located at a first facility, wherein the first facility is located at an intermediate point on a route of travel between a second facility and a third facility . . . comprising code for actively maintaining cryogen within the cryogenic imaging device within predetermined parameters via resources of the first facility.”

The cited references, taken alone or in hypothetical combination, fail to teach or suggest, “A computer program for use with a cryogenic imaging device located at a first

facility, wherein the first facility is located at an intermediate point on a route of travel between a second facility and a third facility . . . comprising code for actively maintaining cryogen within the cryogenic imaging device within predetermined parameters via resources of the first facility,” as recited by independent claim 32. (Emphasis added). The Vince reference discloses a refrigeration system for a container. *See* Vince, par. 10. However, the Vince reference fails to teach or suggest the features of claim 32 as recited above. The Laskaris and Storey references fail to cure the deficiencies of the primary reference. Instead, the Laskaris reference discloses a support assembly for stabilization of a cryostat during transport. *See* Laskaris, col. 1 line 61 – col. 2, line 50. The Storey reference discloses a system for a refrigerated transport container. *See* Storey, col. 1, lines 49-52. In other words, the cited references do not teach or suggest coolant (e.g., cryogen) in a device being cooled within a container, but rather the cited references only disclose coolant circulating in a part of a container and a structural support for transport of a cryostat.

Applicants note that additional references do not obviate the failure of the cited references to teach or suggest features of claim 32. For example, the Jones reference discloses a method for reliquifying boil-off gas during transport of liquid gas in an ocean tanker. *See* Jones, Col. 2, lines 42-64. Jones uses a compression refrigerator to reliquify cargo gas lost due to evaporation. *Id.*

As a result, the cited references, taken alone or in hypothetical combination, cannot support a *prima facie* case of obviousness of independent claim 32 and its dependent claims.

The cited references, taken alone or in hypothetical combination, fail to teach or suggest features recited by independent claim 33.

Independent claim 33 recites, *inter alia*, “A maintenance system for use during transportation of a cryogenic imaging device from a first facility to a second facility,

comprising a third facility . . . wherein the third facility is configured to actively maintain cryogen in the cryogenic imaging device within predetermined parameters.”

The cited references, taken alone or in hypothetical combination, fail to teach or suggest, “A maintenance system for use during transportation of a cryogenic imaging device from a first facility to a second facility, comprising a third facility . . . wherein the third facility is configured to actively maintain cryogen in the cryogenic imaging device within predetermined parameters,” as recited by independent claim 33. (Emphasis added). The Vince reference discloses a refrigeration system for a container. *See* Vince, par. 10. However, the Vince reference fails to teach or suggest the features of claim 33 as recited above. The Laskaris reference fails to cure the deficiencies of the primary reference. Instead, the Laskaris reference discloses a support assembly for stabilization of a cryostat during transport. *See* Laskaris, col. 1 line 61 – col. 2, line 50. In other words, the cited references do not teach or suggest coolant (e.g., cryogen) in a device being cooled within a container, but rather the cited references only disclose coolant circulating in a part of a container and a structural support for transport of a cryostat.

Applicants note that additional references do not obviate the failure of the cited references to teach or suggest features of claim 33. For example, the Storey reference discloses a system for a refrigerated transport container. *See* Storey, col. 1, lines 49-52.

As a result, the cited references, taken alone or in hypothetical combination, cannot support a *prima facie* case of obviousness of independent claim 33 and its dependent claims.

The cited references, taken alone or in hypothetical combination, fail to teach or suggest features recited by independent claim 40.

The present independent claim 40 recites, *inter alia*, “A method of transporting a device having a cryogen from a first facility to a second facility, comprising actively

maintaining the cryogen in the device within pre-determined parameters during at least of portion of a route of travel of the device from the first facility to the second facility via resources of a third facility”

Regarding the first rejection of claim 40, the cited references, taken alone or in hypothetical combination, fail to teach or suggest, “A method of transporting a device having a cryogen from a first facility to a second facility, comprising actively maintaining the cryogen in the device within pre-determined parameters during at least of portion of a route of travel of the device from the first facility to the second facility via resources of a third facility,” as recited by independent claim 40. (Emphasis added). First, Geisy discloses a Dewar vessel used as a container for cryogenic storage or transportation of a material. *See* Geisy, par. 28. The Wowk reference discloses devices for storage or transportation of materials at cryogenic temperatures. *See* Wowk, par. 10-11. The Gershtein reference discloses a system for transportation and storage of a product. *See* Gershtein, col. 1, lines 49-54. However, these references fail to teach or suggest the features recited by claim 40. Moreover, the secondary reference fails to cure the deficiencies of the primary reference. Instead, the Laskaris reference discloses a support assembly for stabilization of a cryostat during transport. *See* Laskaris, col. 1 line 61 – col. 2, line 50.

Regarding the second rejection of claim 40, the Jones reference discloses a method for reliquifying boil-off gas during transport of liquid gas in an ocean tanker. *See* Jones, Col. 2, lines 42-64. Jones uses a compression refrigerator to reliquify cargo gas lost due to evaporation. *Id.* However, Jones fails to teach or suggest the features recited by claim 40. The Laskaris and Storey references fail to cure the deficiencies of the primary reference. Instead, the Laskaris reference discloses a support assembly for stabilization of a cryostat during transport. *See* Laskaris, col. 1 line 61 – col. 2, line 50. The Storey reference discloses a system for a refrigerated transport container. *See* Storey, col. 1, lines 49-52. In other words, the cited references do not teach or suggest coolant

(e.g., cryogen) in a device being cooled within a transport container using an intermediate facility, but rather the cited references only disclose coolant circulating in a part of a container and a structural support for transport of a cryostat.

Applicants note that additional references do not obviate the failure of the cited references to teach or suggest features of claim 40. For example, the Vince reference discloses a refrigeration system for a container. *See* Vince, par. 10.

Accordingly, the cited references, taken alone or in hypothetical combination, cannot support a *prima facie* case of obviousness of independent claim 40 and its dependent claims.

Dependent claims 7 and 26

The present dependent claim 7 recites, *inter alia*, a method for transporting a device by providing commands, “comprising providing power to a cryogen cooling system of the device to recondense the cryogen.” The present dependent claim 26 recites, *inter alia*, “actively maintaining comprises providing commands to a cryogen cooling system of the cryogenic imaging device.”

The cited references, taken alone or in hypothetical combination, fail to teach or suggest methods for transporting a device by providing power or providing commands to a cryogen cooling system of the device being transported. The Jones reference discloses a method for reliquifying boil-off gas during transport of liquid gas in an ocean tanker. *See* Jones, Col. 2, lines 42-64. Jones uses a compression refrigerator to reliquify cargo gas lost due to evaporation. *Id.* The Storey reference discloses a system for a refrigerated transport container. *See* Storey, col. 1, lines 49-52. The Vince reference discloses a refrigeration system for a container. *See* Vince, par. 10. The Laskaris reference discloses a structural support assembly for stabilization of a cryostat during transport. *See* Laskaris, col. 1, line 61 – col. 2, line 50. In other words, the cited references disclose containers for

transport of cold materials or a structure for stable transport of a cryostat – not a system for maintaining the cryogenic cooling system of the device being transported. As a result, the cited references, taken alone or in hypothetical combination, fail to teach or suggest the foregoing claim features among many others of the pending claims. According, the Examiner has not presented a prima facie case of obviousness of dependent claims 7 and 26.

Dependent claims 6, 10, and 24

The present dependent claim 6 recites, *inter alia*, “providing the device to the second facility such that the device is in a superconductive state.” The present dependent claim 10 recites, *inter alia*, a method of transporting a device having cryogen, comprising “maintaining the device in a superconductive state.” The present dependent claim 24 recites, *inter alia*, a method of maintaining a cryogenic device during transport, comprising “maintaining the cryogenic device in a superconductive state.”

First, the cited references, taken alone or in hypothetical combination, fail to teach or suggest, a method of transporting a device having cryogen in a superconductive state, as recited by dependent claims 6, 10, and 24. Geisy discloses a Dewar vessel used as a container for cryogenic storage or transportation of a material. *See* Geisy, par. 28. The Wowk reference discloses devices for storage or transportation of materials at cryogenic temperatures. *See* Wowk, par. 10-11. The Gershtein reference discloses a system for transportation and storage of a product. *See* Gershtein, col. 1, lines 49-54. However, these references fail to teach or suggest the features recited by the foregoing dependent claims. Again, the Storey reference fails to cure the deficiencies of the cited references. The Storey reference discloses a system for a refrigerated transport container. *See* Storey, col. 1, lines 49-52. Moreover, the secondary reference fails to cure the deficiencies of the primary reference. Instead, the Laskaris reference discloses a structural support assembly for stabilization of a cryostat during transport. *See* Laskaris, col. 1 line 61 – col. 2, line 50.

Second, the Jones reference discloses a method for reliquifying boil-off gas during transport of liquid gas in an ocean tanker. *See* Jones, Col. 2, lines 42-64. Jones uses a compression refrigerator to reliquify cargo gas lost due to evaporation. *Id.* In addition, the Vince reference discloses a refrigeration system for a container. *See* Vince, par. 10. Again as stated above, the Storey and Laskaris references fail to cure the deficiencies of the Jones reference and the Vince reference.

In other words, the cited references do not teach or suggest coolant (e.g., cryogen) in a device being cooled within a transport container, but rather the cited references only disclose coolant circulating in a part of a container and a structural support for transport of a cryostat. In view of these deficiencies among others, the cited references, taken alone or in hypothetical combination, cannot render obvious the current dependent claims 6, 10, and 24.

Improper Combination - Lack of Objective Evidence of Reasons to Modify/Combine

In addition, the Examiner has not shown objective evidence of the requisite motivation or suggestion to modify or combine the cited references to reach the present claims. As summarized above, the *KSR* court did not diminish the requirement for objective evidence of obviousness. *KSR, slip op.* at 14 (“To facilitate review, this analysis should be made explicit. *See In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”). As our precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”); *see also, In re Lee*, 61 U.S.P.Q.2d 1430, 1436 (Fed. Cir. 2002) (holding that the factual inquiry whether

to combine references must be thorough and searching, and that it must be based on *objective evidence of record*).

Throughout the present rejection, the Examiner combined the cited references based on conclusory and subjective statements. For example, on page 2 of the Office Action, the Examiner stated, “It would have been obvious to one of ordinary skill in the art at the time of applicant’s invention from the teaching of either Storey et al to modify the device with a cryogen of any one of Giesy et al, Wowk et al or Gershtein by adding a remote monitoring and control system to ensure that the device maintains the parameter within the predetermined range, from a centralized position, to ensure the state of multiple devices simultaneously from a common control point.” On page 3 Examiner stated, “It would have been obvious to one of ordinary skill in the art at the time of applicant’s invention from the teaching of Laskaris to modify the device with a cryogen of any one of Giesy et al, Wowk et al or Gershtein by using the parameter controls for a cryogen during transport in an imaging device during transport to ensure proper functioning of the imaging device when it arrives at the destination.” The Examiner failed to cite any objective evidence as a source for these subjective statements. Accordingly, Applicants respectfully request the Examiner to produce objective evidence of the requisite motivation or suggestion to combine the cited references, or remove the foregoing rejection under 35 U.S.C. § 103.

For at least these reasons, among others, the Applicants respectfully request withdrawal of the rejections under 35 U.S.C. § 103.

Conclusion

In view of the remarks and amendments set forth above, Applicants respectfully request allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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